

February 8, 2013

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's Communications Infrastructure  
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On February 6, 2013, Harold Feld, Senior Vice President, and Jodie Griffin, Staff Attorney, of Public Knowledge (PK) met with Nicholas Degani, Legal Advisor to Commissioner Pai.

PK discussed the Five Fundamentals framework it laid out in its Comments for the technological transition of the public switched telephone network (PSTN).<sup>1</sup> The transition of the PSTN is an opportunity for the Commission to reexamine the framework by which it measures and sets policy for phone service in the United States. The Five Fundamentals serve as a metric by which to evaluate the various proposals already made in this docket according to how well they serve basic principles, rather than simply arbitrating between parties' regulatory wish lists.

Both of the Petitions in this proceeding provide useful points for the Commission to consider. AT&T's Petition is right that the Commission must form a comprehensive approach to address the upgrade of the existing telephone system.<sup>2</sup> The Commission's goal here should be to create uniform regulation, not asymmetric rules that favor one technology over another materially similar technology. The Commission must reexamine the efficacy of past assumptions as applied to the new technological landscape and craft a coherent, comprehensive approach to the regulatory environment. NTCA is right that the Commission's priority must be ensuring the phone network continues to protect consumers, promote competition, and achieve universal service, and that competition has suffered from the uncertainty of whether the Commission's policies promoting competition will be applied to upgraded networks.<sup>3</sup> However, neither of these Petitions set out a framework for evaluating policy choices going forward, so that is what Public Knowledge set out to do in its Comments. That framework consists of Five Fundamental principles:

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<sup>1</sup> See Comments of Public Knowledge, *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017160627>.

<sup>2</sup> See Petition to Launch a Proceeding Concerning the TDM-to-IP Transition of AT&T Inc., *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Nov. 7, 2012).

<sup>3</sup> Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Transition, *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353, at 3-4, 13 (Nov. 19, 2012).

**Service to All Americans.** First, the Commission must continue to pursue service for all Americans. The United States should not be the first industrialized nation to step back from the goal of 100% penetration in basic voice service. Service to all Americans also entails carrier of last resort policies, particularly where carriers might substitute wireless for wireline service in rural areas and the Commission must determine what constitutes a comparable service. The Commission must also ensure that the PSTN continues to offer access to individuals with disabilities and takes advantage of technological advances to improve the quality of service delivered to persons with disabilities.

**Interconnection and Competition.** The Commission must ensure that its policies continue to guarantee interconnection and competition in the market, both to preserve call quality across the country and to promote a robust competitive environment for voice services. Similarly, local number portability rules encourage competition by allowing consumers to respond to providers' price and service changes without losing their phone numbers, but the authority for these rules is currently largely based on ancillary authority. This raises the critical question: when the old infrastructure of the PSTN fades away, how will the Commission ensure that competition policies continue to benefit users in the next iteration of the PSTN?

**Consumer Protection.** The transition of the PSTN must also preserve consumer protections that have greatly benefitted users up to this point. Americans currently rely on a series of regulations to provide adequate protection when they communicate with one another, including privacy, truth-in-billing, slamming, and cramming rules. But today, the consumer protections that extend to VoIP services are based on ancillary authority, which may not prove to be enough when the traditional PSTN is no longer operating. The Commission must ensure that consumers remain adequately protected—including effective recourse for the timely resolution of complaints—throughout and after the IP transition.

**Network Reliability.** On a fundamental level, the PSTN must be able to guarantee that users' phone service will work consistently and reliably, on every network. A successful transition means that phone numbers will still work and calls will still go through with the same reliability they do today. Recent events like the Sandy-related outages and AT&T's U-Verse outage remind us that we cannot take the reliability of the post-transition PSTN for granted, and we must actively ensure that the network will be able to withstand the stress of major emergencies. This is, however, also an opportunity for creative thinking: for example, in emergency situations an IP-based PSTN could use mesh WiFi routers with solar panels as temporary hotspots during an outage, or the Commission could require carriers with compatible networks to offer data roaming during emergencies. The point is that the Commission should greet the PSTN transition with the resolve to maintain the same reliability guarantees the public has always enjoyed, and also stay alert to opportunities that upgraded technology may offer for new solutions.

**Public Safety.** Finally, the Commission must continue to ensure that users can use the phone system to call for emergency services. The Commission is already considering this issue with the Next Generation 9-1-1 transition, but the public safety element of the PSTN transition should be considered in context with the rest of the elements of the network upgrade.

As the Commission moves forward with steps to promote these Five Fundamental principles, the Commission will inevitably need to square with its authority for each particular rule. Of course, the Commission always has the option of at least determining that certain types of VoIP services are Title II services.

Public Knowledge also noted that AT&T's proposed trials are not sufficiently defined to even consider at this point. Any experiment in the real world is going to impact the phone service of real people, and so before the Commission could move forward with a trial program it would need to know the program's metrics, expected lessons, and criteria to determine when the trial must end. For example, a trial to establish technical criteria for § 214(a) authorizations could prove useful, but a trial that simply demonstrates AT&T's ability to behave for two years in return for complete deregulation would not teach us anything.

In this proceeding, we have already seen many stakeholders come forward with their various wish lists for rules to include or not include in the post-transition PSTN regulatory structure. The Commission now has the opportunity to establish guiding principles for the duration of the transition and push for consensus.

Respectfully submitted,

/s/

Jodie Griffin

*Staff Attorney*

PUBLIC KNOWLEDGE